(1957) 04 GAU CK 0002

Gauhati High Court

Case No: None

Rameswaralal Bhuramal		APPELLANT
	Vs	
Dwaraka Prasad Ors.		RESPONDENT

Date of Decision: April 22, 1957

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 133, 135, 136, 344

Hon'ble Judges: Datta, J.C.

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

J.N. Datta, C.J.
This is a revision petition and arises out of a proceeding u/s 133 of the Criminal Procedure Code.

2. The houses of the parties which are at Agartala stand in compounds adjoining each other and there stands a big and tall siris tree on the boundary between the two compounds. The tree belongs to the opposite party. On the S. D. M. being moved he came to the conclusion that the tree stood in such a condition that it might fall wholly or partly at any time on, the house of the petitioner under the stress of a'' storm, and was therefore a source of clanger to the petitioner and his family who live there, and to others who visit on business the Petitioner who is an Advocate, Talukdar and public man.

The S. D. M. therefore issued a conditional order on 30-4-56 directing the opposite party either to remove the tree within 4 days of the receipt of the said order or to appear personally before Sri. K. P. Datta, Magistrate 1st Class Agartala on 17-5-56 at 10 A.M. and to move him to have the order set aside or modified in any manner provided by the Criminal Procedure Code.

3. The case came up for hearing before Sri K. P. Datta on 17-5-56. On that date the opposite party appeared through a pleader and applied for adjournment to file a written statement on the ground that there was a similar case previously also which was dismissed and the opposite party had applied for copies of documents from that case and was awaiting receipt of them.

The Petitioner opposed the prayer for adjournment and pressed that the order be made absolute, but the learned Magistrate however granted an adjournment as he was of the view that it would be against the principles of natural justice to make the order absolute without giving the opposite party a chance. He therefore adjourned the case to 1-6-56 on the condition that no further time would be allowed.

The order-sheet is not very clear as regards the mode of appearance by the parties but it is undisputed before me that on that date the Petitioner appeared in person while the opposite party appeared by a Pleader whose Vakalatnama is also on record.

The Petitioner being dissatisfied with this order moved the District Magistrate but the District Magistrate rejected his revision petition, and now he has come up before this Court with the same request.

4. The contentions put forward before me by the Petitioner may be summarised as follows:

1. That looking to the mandatory nature of the provisions of Sections 135 and 136 the Magistrate had no option but to make the order absolute on 17-5-56 when the opposite party failed to comply with the conditional order by not removing the tree and by not appearing in person.

2. That the provisions for adjournment and exemption from personal attendance contained in the Criminal Procedure Code do not apply to proceedings under chapter X of the Criminal Procedure Code and there being no other provision of law permitting such course in those proceedings the Magistrate had no power either to grant the adjournment or to accept appearance by a Pleader. His refusal to make the order absolute was thus illegal.

3. That in any case the Magistrate was not justified in granting an adjournment and dispensing with personal attendance in the absence of good and sufficient reasons and in the absence of any application for exempting the personal attendance.

5. On these grounds the Petitioner urges that the order of the learned Magistrate dated 17-5-50 be set aside and the conditional order be made absolute by this Court.

6. In my opinion the contentions put forward by the Petitioner are devoid of force. It Will be hardly disputed that proceedings under chapter X are not of a Criminal nature and the apposite party does not stand exactly in the imitation of an accused.

Sections 344 and 540-A Criminal Procedure Code may not therefore be applicable in terms to such proceedings and chapter X is silent on these points. What is then the position in this respect?

7. In my opinion looking to the nature of these proceedings which may at the most be said to be of a quasi-criminal nature, the only reasonable construction that can be placed on the power of the Magistrate to require appearance u/s 133 would be that the power of the Magistrate is not restricted to personal attendance only. In other words the Magistrate has the power to direct either personal attendance or attendance through a Pleader. It follows therefore that the Magistrate can grant such an exemption later on also.

8. It is also a well acknowledged principle that where there is no specific provision the Criminal Court, no less than the Civil Court, has inherent power to mould the procedure to enable it to pass such orders as the ends of justice require. Similarly the power to adjourn must of deemed to exist in a Court irrespective of any provision in the procedural law, because to lord otherwise would lead to an impossible situation in Courts.

9. The Petitioner tried to derive support for his contention from Sahu v. Emperor AIR 1935 Sind 84 (FB) (A). In my opinion that case does not help him because what was held in that case was not that the lower Courts have no inherent power of any kind but only that they Have no inherent power equal to that of the High Court with regard to certain matters.

10. An attempt was also made to point out that if it is held that exemption from personal attendance can be granted to the opposite party then it would mean that the Magistrate will be deprived of the opportunity to examine the opposite party which is compulsory u/s 139-A.

That section does not say that the opposite party must be examined personally and in my opinion if exemption is granted to the opposite party then it would be enough to examine the counsel appearing for the party u/s 139-A, just as it is permissible in the case of an accused who is allowed to appear by a Counsel.

11. It must therefore be found that the Magistrate in proceedings under chapter X can In his discretion dispense with personal attendance of the opposite party and can grant such adjournments as might be necessary. Queen Empress v. Narayana ILR Mad 475 (B) and Queen Empress v. Bishambar Lai ILR All 871 (C) on which reliance was placed by the Petitioner ere cases which do not apply to the circumstances in the present case.

12. It cannot therefore be said that the Magistrate had no option but to make the order final on 17-5-56 and therefore the order of the Magistrate cannot be challenged as suffering from an illegality. The only question that now remains to be examined is whether the Magistrate was justified in exercising his discretion as he

did or his discretion was not exercised properly resulting in failure of justice and it is necessary for this Court to interfere with it and make the order final without giving the opposite party an opportunity to show cause against the conditional order.

13. It is true that no written application for exemption from personal attendance was filed, but it is not absolutely necessary that such an application must be filed. A Magistrate is not prevented from acting on an oral application in such matters. But the record does not disclose the reasons that led the Magistrate to-accept appearance by Pleader and circumstances present in the case give an indication that most probably this point was lost sight of in the lower Court and it was presumed that the opposite party had the right to appear by a Pleader in the ordinary course.

This will however not alter the position because it would mean by necessary implication-that the Court permitted the opposite party to appear by a Pleader, though as far as ground for it are concerned it will have to be said that there was not sufficient cause shown before the Magistrate for permitting exemption from personal attendance. But I think that will make no difference to the position as no harm has been done by it, as already seen to any one and there is no question of any failure of justice having been occasioned by it. This Court will not therefore according to the established principles interfere in that matter.

14. As regards the adjournment I think that the case of the Petitioner stands on even weaker ground. The request of the opposite party for time to file written statement after obtaining: copies from the previous case was in my opinion quite justified. The copy of the order in Miscellaneous case No. 58 of 1953 which was passed by Sri K. P. Chakravorty, Magistrate 1st class on 7-9-53 and which is on the record of the Magistrate goes to show that there was some previous proceeding u/s 133 about the same matter.

As such it was only natural for the opposite party to want to refer to papers in that case and then to put up his defence in the present case. The time allowed by the notice was certainly not enough for this purpose and therefore the Magistrate was fully justified in giving time for that purpose to the opposite party and the question of interference by this Court on that score does not arise. For the above reasons no case has been made out for granting this revision petition and it must fail.

15. The result is that the revision petition fails and is rejected, with a direction that the Magistrate shall now see that this case which has been pending for about 7 months is disposed of as quickly as possible.